

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
IN THE MATTER OF: )  
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Darnez Jones )  
Cloverland Tire Service )  
Montgomery, Montgomery County, Alabama )  
 )  
 )  
\_\_\_\_\_ )

Order No. 13-XXX -ST

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, the Alabama Scrap Tire Environmental Quality Act Ala. Code §§ 22-40A-1 to 22-40A-24, as amended, and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. Darnez Jones d/b/a/ Cloverland Tire Service (hereinafter “Cloverland Tire”) is the responsible party for a scrap tire facility located at 3879 South Court Street in Montgomery, Montgomery County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-40A-11, as amended, the Department is the state agency authorized to administer and enforce the provisions of the Alabama Scrap Tire Environmental Quality Act, Ala. Code §§ 22-40A-1 to 22-40A-24, as amended.

4. ADEM Admin. Code r. 335-4-3-.01(2)(a) requires that Class One Receivers shall register with the Department.

5. On May 24, 2012, Department personnel conducted an inspection and documented that Cloverland Tire had failed to register as a Scrap Tire Receiver.

6. On May 24, 2012, the Department issued a Failure to Register letter to Cloverland Tire requesting that the facility register as a Scrap Tire Receiver as required by the Alabama Scrap Tire Environmental Quality Act and ADEM Administrative Code 335-4.

7. The Department did not receive a response to the May 24, 2012, letter.

8. On July 31, 2012, the Department issued a Notice of Violation (hereinafter "NOV") to Cloverland Tire, for failure to register as a Scrap Tire Receiver. The NOV required Cloverland Tire to submit the registration application within thirty days.

9. The Department has not received a response to the July 31, 2012, NOV.

10. On September 26, 2012, the Department issued a Failure to Respond letter (hereinafter "FTR") to Cloverland Tire requesting a response to the July 31, 2012 NOV.

11. The Department has not received a response to the September 26, 2012 FTR.

### **CONTENTIONS**

Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of

success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Cloverland Tire did not comply with provisions of ADEM Admin. Code div. 335-4. The Department has no evidence of any irreparable harm to the environment.

B. THE STANDARD OF CARE: Cloverland Tire failed to abide by applicable scrap tire requirements and failed to respond to notices from the Department.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Cloverland Tire has realized a significant economic benefit as a result of the violation listed above.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by Cloverland Tire to mitigate any potential effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of previous violations of applicable solid waste requirements.

F. THE ABILITY TO PAY: Cloverland Tire has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has also considered the penalty range imposed for similar violations at other scrap tire receivers.

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Scrap Tire Facility Operation Requirements	\$0 - \$25,000

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate. The civil penalty is summarized in Attachment A.

### **ORDER**

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), and 22-27-7 it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Cloverland Tire shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P O Box 301463  
Montgomery, Alabama 36130-1463

All checks shall reference Cloverland Tire's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance date of this Order and continuing each and every day thereafter, Cloverland Tire shall comply with all applicable provisions of ADEM Admin. Code div. 335-4.

C. That, within thirty days of the issuance of this Order, Cloverland Tire shall submit a complete ADEM Form 537 to the Department.

D. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

E. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Cloverland Tire for the violations cited herein.

F. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Cloverland Tire for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_ day of \_\_\_\_\_, 2013.

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Lance R. LeFleur  
Director

**Attachment A**

**Penalty Synopsis**

**Cloverland Tire Service**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Failure to register as a scrap tire receiver	1	4,000	1,000	
<b>Totals:</b>	-	<b>4,000</b>	<b>1,000</b>	
<b>Economic Benefit:</b>	-			
<b>Mitigating Factors:</b>	-			
<b>Ability to Pay:</b>	-			
<b>Other Factors:</b>	-			
<b>Civil Penalty:</b>				<b>\$5,000.00</b>

Footnotes

\* See the "Findings" of the order.